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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,683	05/24/2006	Kadosa Hevesi	339547US99PCT	2141
22850 7590 05/11/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER XU, LING X				
ART UNIT 1794		PAPER NUMBER		
NOTIFICATION DATE 05/11/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/564,683

**Applicant(s)**

HEVESI, KADOSA

**Examiner**

Ling Xu

**Art Unit**

1794

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 April 2009.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 18-26 and 28-32 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1, 18-26, and 28-32 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 18-26, and 28-32 stand rejected under 35 U.S.C. 102(b) as being anticipated by Coustet et al. (WO-02/48065, its US equivalent, US 2005/0123772, is used as the English translation) for the reasons set forth in the prior Office action dated 12/11/2008.

### ***Response to Arguments***

2. Applicant's arguments filed 4/13/2009 with respect to reference Coustet et al. have been fully considered but they are not persuasive.

Applicants argue that Coustet does not suggest or describe the layer sequence according to the claimed invention. Applicants refer to paragraph [0028] of Coustet and states that "Coustet requires each functional layer to be "sandwiched" between dielectric layers and describes a preferred configuration where the absorbent layer is between the two infrared reflective layers. In contrast, in the layer sequence according to the claimed invention, the first absorbent layer is directly beneath the first infrared reflective layer and the last absorbent layer is directly above the last infrared absorbing layer. No dielectric layer is present between either absorbent layer and the adjacent

infrared reflective layer in the claimed invention. However, such a dielectric intermittent layer is required by Coustet.”

Applicants’ arguments are not persuasive. As stated in the prior Office action, Coustet clearly discloses that a transparent substrate provided with a stack of thin layers comprising an alternation of  $n$  functional layers having reflection properties in the infrared and/or the solar radiation range and of  $n+1$  coatings composed of one or more layers made of a dielectric, so that each functional layer is placed between two coatings. Coustet also discloses that at least one layer absorbent in the visible is inserted between two layers of dielectric of at least one of the said coatings (page 1, [0013]). Accordingly, Coustet does not require that each functional layer has to be “sandwiched” between dielectric layers. Paragraph [0028] of Coustet only describes one of the preferred variants of the disclosed layered structure. A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). See also *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998).”

“Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In *re Susi*, 440 F.2d 442, 169 USPQ423 (CCPA 1971). See MPEP 2123.

In addition, it should be noted that claim 1 recites that a stack of layers comprising at least layers of a) to g). Because the terms “comprising” and “at least” are

used in the claim, the first absorbent layer is not necessary directly beneath the first infrared reflective layer and the last absorbent layer is not necessary directly above the last infrared absorbing layer. More layers can be present within the stack of layers other than the listed layers a) to g) including a dielectric layer being present between the absorbent layer and the adjacent infrared reflective layer.

Applicants also argue that "Coustet cannot disclose a coated 6 mm clear soda-lime glass which has a light absorption value in the range of 35-67%. The maximum value described by the reference is given in example 5a prior to the thermal treatment. The value of light transmission is 49.9% and the value of external light reflection is 16.2%. Because the total of transmission, reflection and absorption is 100%, the absorption of this example is at maximum 34.4%, which is not in the range of the claimed invention."

Applicants' arguments are not persuasive. Coustet clearly discloses that the transparent substrate is made of 6 mm thick clear soda-lime glass (page 3, [0037]). The coated substrate has a light transmission of 40% and an external light reflection of 17% (page 2, [0031]-[0032]). Because the total of transmission, reflection and absorption is 100% (as indicated by the applicants), the light absorption is at about 43%, which is within the range as claimed.

It should be noted that Example 5a of Coustet only describes a specific example of one of the preferred variants of the disclosed layered structure. A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill

the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). See also *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir.1998)."

"Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In *re Susi*, 440 F.2d 442, 169 USPQ423 (CCPA 1971). See MPEP 2123.

### ***Conclusion***

**3. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ling Xu whose telephone number is 571-272-7414. The examiner can normally be reached on 8:00 am- 4:30 pm, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ling Xu  
Primary Examiner  
Art Unit 1794

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Primary Examiner, Art Unit 1794

Lx  
May 5, 2009